

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 1:17-cv-00854-TDS-LPA

REBECCA KOVALICH and SUZANNE )  
NAGELSKI, )

Plaintiffs, )

v. )

PREFERRED PAIN MANAGEMENT & )  
SPINE CARE, P.A., DR. DAVID SPIVEY, )  
individually, and SHERRY SPIVEY, )  
individually. )

Defendants. )

**Exhibit 7**

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FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO. 1:17-cv-00854-TDS-LPA

REBECCA KOVALICH and SUZANNE )  
NAGELSKI, )  
 )  
Plaintiffs, )  
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vs. )  
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PREFERRED PAIN MANAGEMENT & SPINE )  
CARE, P.A., DR. DAVID SPIVEY, )  
individually, and SHERRY SPIVEY, )  
individually, )  
 )  
Defendants. )  
\_\_\_\_\_ )

D E P O S I T I O N

OF

MARY BENTON

At Winston-Salem, North Carolina

Monday, August 27, 2018

REPORTER: ELAINE F. HAYES  
Notary Public

**REED & ASSOCIATES**  
2401 Whirlaway Court  
Matthews, NC 28105  
980-339-3575

1 maintaining the two facilities.

2 Q. Anything else?

3 A. Just working with Dr. Spivey on anything he asks in  
4 terms of, you know, process or marketing, work with  
5 their marketing company.

6 Q. When you're providing services for PPM, do you use a  
7 computer that -- well, let me back up. Do you use a  
8 computer for that?

9 A. I do.

10 Q. And is it your computer?

11 A. It is not.

12 Q. Whose computer is it?

13 A. It is a computer owned by PPM.

14 Q. Is it a desktop computer?

15 A. It is.

16 Q. Where is that computer located?

17 A. In an office at Maplewood Avenue.

18 Q. How long have you used the computer in an office at  
19 Maplewood Avenue to do PPM work?

20 A. I'm trying to remember when I got a PPM e-mail  
21 address. Maybe it was in the middle of '16. I don't  
22 recall.

23 Q. I was going to ask you that. Do you have a PPM  
24 e-mail address?

25 A. I do.

1 Q. And to the best of your recollection, you got that in  
2 roughly the middle of 2016?

3 A. I think so.

4 MS. SMITH: If we can take a coffee break at  
5 some point, I'd like that.

6 MR. HERRMANN: Sure, sure. Just a couple more  
7 questions.

8 Q. For any of your other projects that you do through  
9 your own company, do they provide a computer for you?

10 A. They do not.

11 Q. Do you have your own personal computer that you use  
12 for that work?

13 A. I do.

14 Q. And the office with PPM's computer that you use at  
15 Maplewood Avenue, do you share that office with  
16 anyone?

17 A. I don't now, no.

18 Q. Did you at first share that office?

19 A. I was in many locations in the Maplewood office,  
20 shared with different people. Primarily it was their  
21 office and I would go in and work in there.

22 Q. Sure. Do you currently have your own office there?

23 A. I do.

24 Q. How long have you had your own office?

25 A. Maybe since mid to late '16.

1 higher than they had been in the past."

2 She also went for several hours periodically  
3 during the month to buy supplies, and I felt like  
4 that could be done online. And in fact, that's how I  
5 do secure supplies, nonclinical supplies for the  
6 practice.

7 Q. And because of the stuff that you just talked about,  
8 did you recommend that she would be a candidate for  
9 the reorganization?

10 A. Yes.

11 Q. And speaking of the reorganization, is that still  
12 ongoing today?

13 A. Yes.

14 Q. And when, roughly, did it start?

15 A. It could have started before me, but as I began  
16 looking at the financials for the practice and  
17 looking at cash flow, it started in early '16.

18 Q. And you said it could have started before that;  
19 that's when you became --

20 A. That's when I became involved. That's correct.

21

22

23 A. Yes, it was.

24

25 A. Uh-huh.

1 be rendering.

2 Q. What specifically do you recall discussing with  
3 Dr. Spivey?

4 A. We had had many meetings with [REDACTED] with our  
5 marketing rep, Vermillion, being Laura Schumacher  
6 with Vermillion, trying to see how we were going to  
7 establish that practice, how we were going to market  
8 it, that part of the practice. We even looked at  
9 other locations to perhaps offer the service, as  
10 opposed to having those patients come to the  
11 Maplewood office.

12 And we never could seem to get our arms around  
13 what was going to finally be offered. And so we  
14 decided that it wouldn't be a good program. We  
15 wouldn't be able to make money with it since it was  
16 cash. It would cost a lot of money to provide it  
17 with equipment, specialized equipment. We actually  
18 bought three pieces of specialized equipment for the  
19 program and still decided not to offer it.

20 [REDACTED]

21 A. Who? I'm sorry.

22 Q. She's next underneath [REDACTED]

23 A. I did not know her.

24 Q. So you didn't have any input into any decision?

25 A. No, I did not.

1 Q. Talking about what?

2 A. We were talking about costs.

3 Q. With regard to the lab?

4 A. With regard to the practice. At that point we were  
5 talking about the lab.

6 Q. What did you do to find out, you know, kind of what  
7 Rebecca was contributing to the lab?

8 A. I asked Gretchan and Rodney because I went to them  
9 for the information regarding costs.

10 Q. What did Gretchan tell you?

11 A. Well, they gave me cost figures. At that point I was  
12 not paying invoices, so I didn't know what lab  
13 charges were without going to them for those costs.

14 Q. Aside from the cost figures, what other information  
15 did Gretchan and Rodney give you?

16 A. I asked them if Rebecca came very often to the lab.  
17 Now, this is in '16. And they told me that she  
18 didn't come very often.

19 Q. Any other input they gave you about Rebecca?

20 A. No.

21 Q. Did you ask if Rebecca was doing work from outside  
22 the lab?

23 A. I did not.

24 Q. Was it important to you that she was not physically  
25 at the lab?

1 lab, and one of those expenses would have been  
2 Rebecca's salary.

3 Q. Did you ever meet with Rebecca to learn about her  
4 background?

5 A. Not specifically. I mean, I knew that she had helped  
6 Dr. Spivey set the lab up. I knew that she had set  
7 up other labs in the past, that she had been a  
8 practice manager. But I didn't -- after I started  
9 working with Dr. Spivey and Preferred Pain, I don't  
10 recall that I sat down and interviewed with her, that  
11 kind of thing.

12 Q. Did you ever ask her what services she was providing  
13 for PPM?

14 A. I didn't.

15 Q. Did you ever ask anyone else what services Rebecca  
16 was providing?

17 A. I asked Gretchan and Rodney when I went and asked  
18 them did she come, what is she doing, you know, and I  
19 asked, you know, in terms of the day-to-day  
20 responsibilities.

21 Q. When you asked them what she was doing, what did  
22 Gretchan tell you?

23 A. For instance, I asked about invoices, and Gretchan  
24 indicated that she handled all the -- she, Gretchan,  
25 handled all the invoices, the interaction with Select



1 as it relates to providing reagents, that kind of  
2 thing.

3 Q. Did you ever ask Gretchan if she thought she could do  
4 Rebecca's job?

5 A. No, I don't recall asking her directly that question  
6 at all.

7 Q. Did you ever ask them kind of open endedly, "What  
8 does Rebecca do?"

9 A. Yes. And actually it ended up -- I got a list of  
10 what Gretchan was doing, some of which I thought  
11 might have been what Rebecca did, but Gretchan was  
12 doing those functions.

13 Q. What did they tell you in response to what  
14 Ms. Kovalich was doing?

15 A. They didn't tell me specifically what she was doing.

16 Q. But you asked and they didn't answer?

17 A. I don't recall that I asked specifically what does  
18 she do versus what the list of responsibilities were  
19 that Gretchan provided.

20 Q. What is your background with regard to laboratories,  
21 other than what we discussed earlier?

22 A. That's all.

23 Q. How did you evaluate Rebecca's, I guess,  
24 contributions to PPM?

25 A. I don't think I said I did that.

1 A. I'm here.

2 Q. And if you flip to just a couple pages back to see  
3 what the columns say. So if you go back to 5304,  
4 I'll represent to you this is last name, first name,  
5 birth date, and hire date for PPM employees. Do you  
6 see that up top?

7 A. Uh-huh, I do.

8 Q. And on 5306, do you see Jennifer McGraw listed?

9 A. Yes.

10 Q. It looks like her hire date was May of 2010.

11 A. Uh-huh.

12 Q. Yes?

13 A. That's what it says, yes.

14 Q. And is she a PPM employee?

15 A. She is on the payroll for PPM.

16 Q. Do you know roughly what her salary is?

17 A. I do not.

18 Q. What does she do for PPM?

19 A. I'm not sure.

20 Q. Do you know whether or not she's the director of  
21 marketing?

22 A. She may have that title, but I don't know.

23 Q. Do you know whether or not she's also a real estate  
24 agent?

25 A. I believe she is a residential real estate agent.

1 Q. How often is Ms. McGraw in the office?

2 A. I have not seen Ms. McGraw in the office. That  
3 doesn't mean she's not there, but I haven't seen her.

4 Q. And you testified earlier about working -- correct me  
5 if I'm wrong -- with someone at Vermillion?

6 A. Yes.

7 Q. Is that Laura Schumacher?

8 A. Laura Schumacher, yes.

9 Q. Do those communications involve marketing for PPM?

10 A. With Laura Schumacher?

11 Q. Yeah.

12 A. Yes, they do.

13 Q. Has Ms. McGraw ever been involved in those  
14 conversations?

15 A. No.

16 Q. Have you ever looked into, in terms of saving money  
17 for PPM, whether Ms. McGraw's being on the payroll is  
18 something that's necessary?

19 A. I have asked but did not get a response that it  
20 should -- her position should be eliminated, no.

21 Q. Who did you ask about that?

22 A. Dr. Spivey.

23 Q. And what specifically did you ask him?

24 A. I asked him about should she be an employee or a  
25 contract employee.

1 Q. And what did he say?

2 A. He said he had thought about it, and he wasn't sure  
3 what he was going to do. We asked one time.

4 Q. When did that conversation happen?

5 A. In the last year.

6 Q. You know, kind of based on what you know about what  
7 Ms. McGraw does, would it be your recommendation that  
8 she stay on the payroll?

9 A. I recommended that she become a contract employee  
10 since she wasn't actively at the office.

11 Q. Have you ever asked anyone else what sort of services  
12 she provides for PPM?

13 A. I have not.

14 Q. Have you asked Dr. Spivey about that?

15 A. We had conversation when I was asking whether or not  
16 she should be an employee or a contract employee.

17 Q. Do you remember what he said about --

18 A. He said, as I mentioned before, he had thought about  
19 it, but he wasn't sure what he would do.

20 Q. Did you ask him what she does for PPM?

21 A. No, I did not.

22 Q. Have you ever asked anyone what Ms. McGraw does for  
23 PPM?

24 A. I did in the beginning. In the conversations I had  
25 with him at that time, I did not ask. Based on your

1 question.

2 Q. In the beginning you did, though?

3 A. Yes.

4 Q. And what response did you get?

5 A. That she is involved in marketing. That was the  
6 response I got.

7 Q. Are you aware of any marketing work that she's done?

8 A. Not that I'm aware of.

9 Q. Have you ever met her?

10 A. Yes. I said I've met her once.

11 Q. And tell me about that one meeting.

12 A. I met her with Sherry. She was in the process of  
13 working on her real estate license, and we talked  
14 about real estate, commercial versus residential.

15 Q. Did you talk about PPM work at all with her?

16 A. I don't recall that we did.

17 Q. Was that meeting before or after you had talked with  
18 Dr. Spivey about switching her to a contract  
19 position?

20 A. Before. It was a social conversation, not a work  
21 conversation.

22 MR. HERRMANN: Nothing else for me.

23 MS. SMITH: All right. Let's take a quick  
24 break then.

25 (Recess from 2:32 p.m to 2:40 p.m.)

1 Q. Uh-huh, yes.

2 A. They would probably contact me or Dr. Spivey. At  
3 that point in time they were reporting to Dr. Spivey.

4 Q. And do you know if they contacted Dr. Spivey with  
5 issues related to the lab at all?

6 A. Not recently because they don't report directly to  
7 Dr. Spivey anymore. As part of the reorganization,  
8 they were put under the clinic with the clinic staff.

9 MS. SMITH: I think that's all the questions I  
10 have for you, Ms. Benton. Thank you.

11 THE WITNESS: Thank you.

12

13 FURTHER EXAMINATION BY MR. HERRMANN

14 Q. When were Rodney and Gretchan put under the clinic  
15 staff?

16 A. Probably in the last six months or so, six to nine  
17 months or so.

18 Q. And am I right that Mrs. Spivey, is she the clinic  
19 manager?

20 A. Yes.

21 Q. So would they be under her purview?

22 A. Yes.

23 Q. How many hours a week is Mrs. Spivey in the office?

24 A. It varies. I don't know how many hours. 10 hours  
25 sometimes, 20 hours. It depends.